

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY**

Notice of Intent and Request for Information:
Designation of National Interest Electric Transmission Corridors

**COMMENTS OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION,
NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY,
AND NEW YORK STATE DEPARTMENT OF STATE**

INTRODUCTION

On May 15, 2023, the U.S. Department of Energy (DOE) Grid Deployment Office (GDO) issued a Notice of Intent (NOI) and Request for Information (RFI) identifying DOE’s intent to “establish a process to designate ‘route-specific’ National Interest Electric Transmission Corridors (NIETCs).” DOE notes that it is in the process of fulfilling its statutory obligations under the Federal Power Act to conduct a study, on a triennial basis, of electric transmission constraints and congestion (i.e., a Needs Study).¹ On the basis of the Needs Study and other information, DOE may designate areas as NIETCs. Such designations would serve as a potential foundation for DOE to provide financing/loans to support the construction of transmission facilities and/or for the Federal Energy Regulatory Commission (FERC) to invoke its transmission siting authority within those NIETCs.

As indicated in the NOI, DOE “intends to invite Applicants to propose routes where one or more potential transmission projects could be located within a geographic area where DOE has identified transmission need(s) (i.e., present or expected electric transmission capacity constraints or congestion that adversely affects consumers), either through the Needs Study or

¹ 16 USC 824p (a).

through other evaluations provided by the Applicant.”² The NOI identifies various information that Applicants would be required to submit to support their proposals for NIETC designations, including considerations supporting a potential designation and environment factors regarding the route to help facilitate DOE’s completion of a review pursuant to the National Environmental Policy Act. As part of the RFI, DOE seeks comments on the various aspects of this proposal.

The New York State Public Service Commission (NYSPSC), New York State Energy Research and Development Authority (NYSERDA), and New York State Department of State (NYSDOS) (collectively, the NY State Entities) each play a key role in the development and siting of transmission facilities in New York State. Accordingly, the NY State Entities provide these comments to assist the DOE in crafting a workable approach for designating NIETCs that aligns with New York’s current planning and siting processes.³ The following section provides a summary of the NY State Entities’ response to the NOI and the responses to several of the questions posed in the RFI. A separate section is also included identifying the specific questions identified by DOE and the responses thereto, as requested in the RFI.

SUMMARY OF POSITION

New York is currently undertaking a fundamental shift towards clean and renewable energy resources, recognizing the need for new and upgraded transmission facilities to support the deliverability of such energy throughout the State. New York’s Climate Leadership and

² 88 Fed. Reg. 30960. The NOI indicates that “DOE expects Applicants for a potential NIETC designation to be transmission developers with a project under development in the proposed route. However, no particular stage of development [would be] required for an Applicant to seek potential designation.”

³ The views expressed herein are not intended to represent those of any individual member of the NYSPSC. Pursuant to Section 12 of the New York Public Service Law, N.Y. Pub. Serv. L. §12, the NYSPSC Chair is authorized to direct this filing on behalf of the NYSPSC.

Community Protection Act (CLCPA) amended the New York Public Service Law (PSL) by adding PSL §66-p(2), which directs the NYSPSC to “establish a program to require that: (a) a minimum of seventy percent of the state wide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end-use customers in New York state in two thousand thirty shall be generated by renewable energy systems; and (b) that by the year two thousand forty (collectively, the ‘targets’) the statewide electrical demand system will be zero emissions.” Further, the Accelerated Renewables Energy Growth and Community Benefit Act (Accelerated Renewables Act) directs the NYSPSC and New York Department of Public Service Staff (NYSDPS Staff) to take actions to ensure that renewable energy can be efficiently and cost-effectively injected into the State’s Transmission and Distribution (T&D) system.⁴ The Accelerated Renewables Act specifically directs NYSDPS Staff, in consultation with state authorities,⁵ the Joint Utilities,⁶ and the New York Independent System Operator, Inc. (NYISO), to conduct a “power grid study” to identify T&D infrastructure needed to enable the state to meet CLCPA targets related to renewable energy and energy storage.⁷ The Accelerated Renewables Act further directs the Commission to use the results of such study to: (1) develop plans to enable timely upgrades to the local T&D system; (2) identify bulk transmission

⁴ Chapter 58 (Part JJJ) of the laws of 2020.

⁵ Section 7 of the Accelerated Renewable Act identifies the state authorities for consultation as NYSERDA, the New York Power Authority (NYPA), and the Long Island Power Authority (LIPA).

⁶ The Joint Utilities include: Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; New York State Electric and Gas Corporation; Rochester Gas and Electric Corporation; Central Hudson Gas & Electric Corporation; and Niagara Mohawk Power Corporation d/b/a National Grid.

⁷ NYSDPS Staff, working with NYSERDA, filed the Initial Report on the Power Grid Study, including the Power Grid Study, on January 19, 2021, in NYSPSC Case 20-E-0197.

investments that should be made, including projects that should be pursued on an expedited basis to meet CLCPA goals; and (3) otherwise advance the policies of the Act.

To address these legislative mandates, significant efforts are already being made to identify and address where transmission capacity constraints currently exist or are expected to arise in the future. These initiatives involve a coordinated planning approach among various entities, such as the NY State Entities, the State's transmission-owning utilities (i.e., the Joint Utilities, NYPA, and LIPA), the NYISO, and impacted stakeholders. Similarly, the NYISO has been directed by FERC to undertake transmission planning efforts to identify transmission needs for reliability, economic, or public policy purposes. These planning efforts have already identified where new or upgraded transmission facilities are needed to meet these various system needs, and will continue to do so.

The NY State Entities recommend that DOE adopt an approach that integrates with the existing planning processes in New York by requiring Applicants for NIETC designations to have at least reached the stage of development where a project/route has been identified by the state entity with authority over transmission planning or the FERC-designated regional planning entity (e.g., the NYSPSC or the NYISO) as a potential solution to a need. At this point in the process, it is apparent where a need exists, and which projects are no longer speculative. Applicants seeking a route-specific NIETC designation from DOE should be required to demonstrate compliance with this criterion. In addition, Applicants should be required to demonstrate that they have consulted with the state entity responsible for siting transmission (or the governor's office if such an entity does not exist) regarding a forthcoming application for a NIETC designation.

While the NOI identifies various information that Applicants should provide, DOE should not dictate page limitations where environmental information is being provided to support

a potential NIETC designation for siting purposes. Further, the NY State Entities recommend that DOE address the cumulative impacts of potentially multiple projects in the same location, including both the positive and negative impacts of co-location, and how climate change may impact such projects. These refinements, and other matters discussed below, are intended to make DOE's process manageable and efficient, and to assist stakeholders.

RESPONSES TO QUESTIONS

Question 1. Please comment on the approach to NIETC designation discussed in the NOI. What are the potential positive and negative impacts of such an approach? How could this process, especially how applications for designation are structured, be altered or improved?

The DOE's intended approach of having Applicants propose route-specific NIETCs could serve as an opportunity to make certain financing arrangements available to support the construction of needed transmission facilities. As DOE explains, the Infrastructure Investment and Jobs Act and the Inflation Reduction Act approved \$2.5 billion and \$2 billion, respectively, in funding/loans to facilitate transmission construction. However, given the limited funds available, DOE should ensure that they are used in support of transmission solutions that meet the needs identified by the states or regional planning processes. Specifically, DOE should require Applicants to demonstrate that a NIETC designation would accommodate a project identified in a state or regional transmission planning process, such as those directed under FERC Order No. 1000, as the most efficient or cost-effective solution to a need.⁸ As a benefit of having already undergone a state or regional transmission planning process, Applicants would be able to show that their projects had undergone various analyses and compare favorably to

⁸ See Docket No. RM10-23-000, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, Order No. 1000 (issued July 21, 2011), reh'g denied, Order No. 1000-A (issued May 17, 2012), reh'g denied, Order No. 1000-B (issued October 18, 2012).

potential alternatives. This approach, focusing on projects that have state/regional planning support, would also prevent Applicants from submitting numerous speculative NIETC designations, which could become administratively burdensome for DOE to process and divert limited resources.

Question 2. Please comment on the information DOE intends to request as part of an application in Section II.A.iii—are elements of these requests and/or supporting rationale overly burdensome on respondents?⁹

The NY State Entities do not believe the requested elements are overly burdensome. As suggested below, additional information may be warranted.

Question 3. Is there other information or types of information not listed in Section II.A.iii that should be requested to inform the evaluation and designation of NIETCs?

The NY State Entities do not currently have further information on this question.

Question 4. For any of the information listed in Section II.A.iii or suggested in response to the question above, what metrics and methods are available for evaluating how that information meets the statutory requirements for a NIETC described in Section I.C?

The NY State Entities do not currently take a position on this question.

Question 5. When considering the merits of corridor designation applications, how should DOE evaluate and weight the impact that a proposed corridor and any associated potential project(s) may have on:

- a. Alleviating congestion or transmission capacity constraints and/or responding to concerns identified in the Needs Study,
- b. Grid reliability and resilience,
- c. Reducing greenhouse gas emissions,
- d. Generating host community benefits,
- e. Encouraging strong labor standards and the growth of union jobs and expanding career-track workforce development in various regions of the country,
- f. Improving energy equity and achieving environmental justice goals,
- g. Maximizing the use of products and materials made in the United States, and
- h. Maintaining or improving energy security?

⁹ The NY State Entities assume questions two through four were intended to reference Section III.A.iii.

How should DOE evaluate eligible projects that include benefits that may vary across any of the above set of preferred impacts? To what extent should DOE consider other related outcomes like cumulative impacts from a potential corridor? What information should DOE seek to inform such considerations? What metrics and methods are available for conducting such evaluations?

With respect to the cumulative impacts from a potential corridor, DOE should carefully analyze both the positive and negative environmental impacts of multiple construction activities and the ability of a corridor to safely accommodate transmission lines over time, recognizing the potential impacts of climate change. At a minimum, DOE's environmental review should address the guidance on cumulative analyses prepared by the Council on Environmental Quality.¹⁰ In addition, DOE should solicit input from the affected states, local governments, community stakeholders, and the scientific community.

Question 6. Are there other potential Applicants beyond those listed in Section II.A.i that should be considered when developing final guidance, or whose specific needs should be considered when developing this process?

The DOE should, as suggested, open the pool of potential Applicants to include states, given their unique interests in NIETC designations. In any event, states should be considered a primary stakeholder that should be consulted with as a prerequisite to the filing of any requested NIETC designations. Moreover, because the term "states" encompasses various entities, DOE should explicitly require consultation with the state utility regulatory agency, state energy office, and the governor's office, as a minimum.

Question 7. Should DOE accept proposals or recommendations for NIETCs on an annual basis, on some other defined frequency, or on a rolling basis? How long should defined request periods be open?

The NY State Entities do not currently take a position on this question.

¹⁰ https://ceq.doe.gov/publications/cumulative_effects.html.

Question 8. Should DOE explicitly seek NIETC corridor proposals that facilitate the development of certain kinds of transmission projects or that meet specific identified transmission needs (e.g., interregional transmission projects)?

The New York State Entities believe that interregional projects present the clearest alignment of federal interests and federal jurisdiction and may be most appropriate for designation as NIETCs. As noted above, New York’s clean and renewable energy policy objectives have elevated the need for new and upgraded transmission facilities to support the deliverability of such energy throughout the State. Planning initiatives are currently being used to identify where transmission capacity constraints exist or are expected to arise in the future, and to address these constraints where warranted. Accordingly, given the State’s commitment to constructing needed infrastructure, there is no need to designate a NIETC to support a federal siting process for intrastate transmission facilities that are located solely within New York. To the extent the regional transmission planning processes identify a preferred intrastate transmission solution, the NIETC designation should be available to support financing opportunities, as noted above.¹¹

The NY State Entities recommend that the DOE defer to the existing state and regional planning processes, rather than explicitly seeking certain kinds of projects or seeking to address identified needs. The existing processes are already well equipped to identify projects needed for reliability, economic, and/or public policy purposes. Instead, the DOE should support these existing processes where appropriate. Notably, this could include designating NIETCs to support the siting of interstate transmission facilities to help enhance system reliability and transition to a clean energy future more quickly and affordably.

¹¹ See request from northeast states seeking DOE assistance in forming a “Northeast States Collaborative on Interregional Transmission.” Available at: <https://www.mass.gov/doc/interregional-transmission-letter/download>.

Question 9. Should DOE create separate tracks for those applicants who are interested in backstop siting and financing versus those interested in only access to DOE commercial facilitation and finance tools? In your response, please address how the environmental review and other review processes—including with FERC, other federal agencies, and state regulatory bodies—might differ, the relative timing and urgency for siting corridors versus financing corridors, differences in when in the project development cycle an applicant may seek a financing or siting corridor, and conversion between corridor types.

DOE should clearly distinguish between Applicants seeking a NIETC designation for purposes of obtaining financing/commercial facilitation, and those seeking a designation for purposes of invoking FERC’s siting authority, as the substance and scope of the petitions would vary. To the extent an Applicant only seeks a NIETC designation to obtain financing or commercial facilitation, it may be appropriate to reduce the level of information required to be submitted, so long as state support for the project is demonstrated. Further coordination with relevant state entities is recommended to determine the submission requirements for financing applications. Where a NIETC designation may be used for siting purposes, however, a complete and accurate environmental review is warranted. For example, the DOE should not limit the length of the “Affected Environmental Resources and Impacts Summary” to 20 pages (See Section III.A.iii.(iv)).

Question 10. To the extent practicable, DOE anticipates leading the coordination of NEPA reviews with other agencies to support their NEPA documentation and to streamline their responsibilities related to facility permitting as well as coordinating with any other Federal agency required to participate in NIETC designations. To support and facilitate environmental review, DOE anticipates requiring that proposed “route-specific corridors” include or are supported by, to the extent practicable, existing environmental data and analyses that any federal agency may require to complete its environmental review. In particular, where projects in NIETCs indicate an intention to seek siting permits from FERC under section 216(b) of the FPA, DOE anticipates that it will coordinate with FERC to avoid redundancy and promote efficiency in environmental reviews. Accordingly, DOE intends to request a scope and level of detail similar to what FERC would require pursuant to its responsibilities.

- a. Please comment on the role of FERC in the corridor designation process. How can DOE and FERC coordinate to avoid redundancy and promote efficiency in environmental reviews regarding the DOE corridor designation and any potential FERC permit applications? Please be as specific as possible, including but not limited to how the

timing of the corridor designations and permit applications restricts or facilitates coordination, and practicable approaches to implementation.

The NY State Entities support DOE's efforts to promote regulatory efficiencies. To further this goal, DOE should require Applicants to demonstrate conformance with all applicable federal and state regulatory requirements governing transmission infrastructure. For example, in New York, Article VII of the New York State Public Service Law §120 et. seq., governs the siting of a "major utility transmission facility" and requires a full review of the need for, and environmental impact of, the siting, design, construction, and operation of such facility within the State's jurisdictional boundary. In addition, there are federally delegated programs that include enforceable state refinements. For example, NYSDOS reviews federal actions for consistency with the approved New York State Coastal Management Program pursuant to the federal Coastal Zone Management Act (15 CFR Part 930).

- b. Is there additional information that DOE should request in its NIETC application beyond the information listed in Section II.A.iii? Is additional information beyond the information listed in Section II.A.iii, necessary to develop a record consistent with that which FERC would require to meet its responsibilities under section 216(b) and NEPA?

The NY State Entities recommend certain clarifications be included in Section II.A.iii. In particular, geographic boundaries should be appropriately sized to pursue reasonable siting alternatives. Defining NIETCs that are too narrow would encumber the siting and environmental review process that requires avoidance and minimization before considering mitigative measures. For example, NIETCs located within or adjacent to aquatic resources should include sufficient onshore area within the geographic boundaries to evaluate avoidance and minimization measures.

In addition, the listed information that the Affected Environmental Resources and Impacts Summary evaluates should be amended to include: 1) an alternatives analysis that

evaluates reasonable siting and design alternatives with supporting narrative and graphics; 2) potential impacts to state and local public lands including open space and public trust resources (See Section III.A.iii.(iv).b); 3) sensitive aquatic habitats including marine and estuarine habitats, such as littoral areas, submerged aquatic vegetation, and hard bottom habitats (Section III.A.iii.(iv). h); 4) disadvantaged or underserved communities; 5) public health evaluations; and 6) cumulative impacts with planned activities and climate change.¹²

Question 11. Are there other forms of outreach and/or consultation that should be included in this process to ensure adequate participation of and notice to Tribal authorities, State, local, the public, and appropriate regional authorities? For example, should regional planning entities or grid operators be included in outreach or consultation?

The NY State Entities recommend that Applicants prepare a Stakeholder Outreach Plan (Plan) as part of their submission. Such Plans should be structured to ensure alignment with federal, tribal, state, and local principles for a just transition to clean energy, such as those outlined in the New York State CLCPA.¹³

If NIETCs are envisioned to generate host community benefits (as alluded to in Question 5), it would be appropriate for DOE to solicit public input during early phases of corridor designation in a specific locale to help identify stakeholder groups, important benefits, and/or

¹² New York’s Climate Leadership and Community Protection Act (CLCPA) defined the concept of Disadvantaged Communities as “communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households.” See Environmental Conservation Law (ECL) §75-0101(5). The CLCPA provided a process through which a Climate Justice Working Group would establish specific criteria for identifying Disadvantaged Communities and finalized the initial set of Disadvantaged Communities criteria in March 2023. See Climate Justice Working Group, Disadvantaged Communities Criteria (March 27, 2023), available at: <https://climate.ny.gov/Resources/Disadvantaged-Communities-Criteria>.

¹³ See, e.g., NYS Offshore Wind Solicitation, Appendix F - Elements of the Stakeholder Engagement Plan. Available at: <https://portal.nyscrda.ny.gov/servlet/servlet.FileDownload?file=00P8z00000208FtEAI>.

potential impacts to address. This approach aligns with recommendations in DOE's toolkit.¹⁴ The criteria, goals, and implementation strategies to carry out the responsive programs and initiatives should be outlined in DOE's solicitation. Such clarity early in the planning process will also help prevent investments from going towards strategies that may inadvertently disincentivize, or result in ineffective investments to, programs meant to address challenges in underserved, disadvantaged, and overburdened communities.

These recommendations will establish a structured public engagement process and signal the importance of building public trust early in the application phase.

Question 12. Are there post-designation procedures not discussed in this request that should be included?

The NY State Entities do not currently have further information on this question, but look forward to continued coordination.

CONCLUSION

The NY State Entities appreciate the opportunity to provide input on DOE's NOI and RFI. The proposed approach for Applicants to seek designations of route-specific NIETCs would be greatly improved by ensuring sufficient coordination with relevant state entities and integrating with existing state and regional transmission planning processes. The NY State Entities recommend that DOE adopt the recommendations contained herein and look forward to

¹⁴ See <https://www.energy.gov/diversity/community-benefit-agreement-cba-toolkit>.

further collaboration with DOE to ensure the successful deployment of needed transmission facilities.

Respectfully submitted,

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